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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,069	01/29/2002	Kim Lesley Alderson	P00587-US	9650
3017	7590	06/28/2004	EXAMINER	
BARLOW, JOSEPHS & HOLMES, LTD. 101 DYER STREET 5TH FLOOR PROVIDENCE, RI 02903			COLE, ELIZABETH M	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,069

Applicant(s)

ALDERSON ET AL.

Examiner

Elizabeth M. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32, 33 and 35-62 is/are pending in the application.
- 4a) Of the above claim(s) 32 and 45-62 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33 and 35-42 is/are allowed.
- 6) ☒ Claim(s) 43-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Complete Textile Glossary" in view of "The effect of Powder Morphology on the Process of Auxetic Polypropylene" and "A stretch of the Imagination". "Complete Textile Glossary" discloses a method of forming polypropylene fibers comprising melt spinning, (i.e., extruding), the polymer. "Complete Textile Glossary" differs from the claimed invention because it does not disclose forming the polypropylene fibers from thermoformable particulate polymer material wherein cohesion and extrusion are effected during spinning at a temperature which is sufficient to permit production of filaments without causing actual melting and complete coalescence of the particles into a liquid form. "The effect of Powder Morphology" teaches that polypropylene particles may be extruded so as to form auxetic materials, by selecting particles which have are irregularly shaped, have a size of up to 300 um in diameter and by controlling the processing conditions so that the an auxetic polymer was produced. See pages 637 and 642. "A stretch of the Imagination" teaches that auxetic fibers would be desirable because of their flexibility. Therefore, it would have been obvious to have formed auxetic polypropylene fibers by extruding the polypropylene according to the process disclosed in "The effect of Powder Morphology". One of ordinary skill in the art would have been motivated to spin the auxetic polypropylene into fibers by the teaching of "A stretch of the Imagination" which details the advantages of having auxetic polymeric fibers. See page 39. While the polypropylene fibers would have been formed

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by a different method than the claimed method, since claims 43-44 are drawn to the product, the burden is shifted to applicant to show that the process differences result in a nonobvious product. Product by process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. "Even though product - by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product - by - process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

Once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983).

2. Claims 32, 34-42 are allowed.

3. Applicant's arguments regarding the process differences between the claimed process and the prior art are persuasive with regard to the method claims. In particular, the claims as amended recite that "there is substantially no compaction or sintering of the polymer material prior to spinning of the material". This limitation is not taught or suggested by the prior art. However, claims 43-44 are drawn to a product and therefore, the burden is shifted to Applicant to show that the process differences would result in an unobvious difference between a product made according to the claimed method and a product made by the prior art method.

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4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

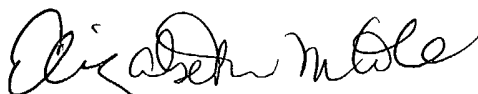
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (703) 872-9306.

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A handwritten signature in black ink, appearing to read "Elizabeth M. Cole". The signature is fluid and cursive, with the first name "Elizabeth" written in a larger, more prominent script than the last name "Cole".

Elizabeth M. Cole
Primary Examiner
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e.m.c